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DAE#1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

:

Plaintiff,

:

v.

:

SPACE HUNTERS, INC. and
JOHN McDERMOTT,

:

Defendants.

:

:

-----X

COMPLAINT

00 Civ.

JURY TRIAL DEMANDED

Plaintiff, United States of America, by its attorney,
Mary Jo White, United States Attorney for the Southern District of
New York, alleges for its complaint upon information and belief as
follows:

SUMMARY OF THIS ACTION

1. This is a civil action for declaratory relief,
injunctive relief, and compensatory and punitive damages under the
Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq. (the
"Act"), brought by the United States of America on behalf of (1)
Keith Toto ("Mr. Toto") to redress discrimination on the basis of
physical disability, and (2) the Fair Housing Council of Northern
New Jersey (the "Fair Housing Council") to redress discrimination
on the basis of race and color.

2. As alleged more fully below, defendants unlawfully discriminated against Mr. Toto by, among other things, refusing to accept telephone calls from Mr. Toto, who is deaf, solely because those calls were placed through a relay service operator. Rather than accept Mr. Toto's telephone calls, defendant John McDermott, the president and owner of defendant Space Hunters, a company that furnishes rental services to prospective tenants for compensation, told Mr. Toto through the relay service operator to "eat shit" and hung up the telephone on him. According to McDermott, Space Hunters has a policy of not accepting telephone calls from persons who call through relay service operators, claiming that such calls are "time consuming" and that defendants "simply have better things to do with our time." McDermott has also claimed that Space Hunters is not required "to lift a finger" to comply with the Fair Housing Act with respect to Mr. Toto.

3. In addition, as alleged more fully below, during the course of tests for racial discrimination conducted by the Fair Housing Council, defendant McDermott made statements to white testers referring to African-Americans as "niggers," "lowlife" and "dumb." In addition, McDermott discouraged white testers from considering housing in the Hunts Point section of the Bronx; steered white testers to the "northern" Bronx; and otherwise treated black testers differently than white testers under similar circumstances.

4. Defendants' conduct violates the Fair Housing Act and should be declared unlawful and permanently enjoined, and appropriate money damages should be awarded.

5. The United States requests a trial by jury as to the issues of liability and compensatory and punitive damages.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to Section 812(o) of the Act, 42 U.S.C. § 3612(o), and pursuant to 28 U.S.C. §§ 1331 and 1345.

7. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 812(o) of the Act, 42 U.S.C. § 3612(o).

8. Venue is proper under 28 U.S.C. §§ 1391(b) and (c). Defendant Space Hunters resides in this district, and the events giving rise to this complaint occurred in this district.

THE PARTIES

9. The plaintiff is the United States of America.

10. Defendant Space Hunters is a New York corporation with an office located at 56 East 41st Street, New York, New York. Among other services, Space Hunters compiles information about rooms available for rent in New York City, advertises the availability of rooms for rent, and, in exchange for a non-refundable fee, identifies and provides information about those rooms to prospective tenants.

11. Defendant McDermott is the president and owner of defendant Space Hunters.

12. The rooms listed for rent by defendants are "dwellings" within the meaning of section 802(b) of the Act, 42 U.S.C. § 3602(b), and defendants are in the business of renting dwellings within the meaning of section 803(c) of the Act, 42

FACTUAL BACKGROUND

A. Mr. Toto's Complaint and Defendants' Discrimination on the Basis of Disability

13. Keith Toto, who is deaf, is a person with a "handicap" within the meaning of section 802(h) of the Fair Housing Act, 42 U.S.C. § 3602(h). Mr. Toto can communicate by telephone to parties who do not have a Telephone Device for the Deaf ("TDD") only through the services of a relay operator.

14. On or about January 15, 1999, Mr. Toto telephoned Space Hunters in response to a newspaper advertisement that Space Hunters had placed concerning rooms available for rent. Because Space Hunters does not have a TDD, Mr. Toto placed his call to Space Hunters through a relay service operator. The individual who answered the telephone at Space Hunters informed Mr. Toto, through the relay operator, that Space Hunters does not service the disabled. When Mr. Toto persisted in his effort to inquire about rental properties, the individual at Space Hunters refused to deal with him on account of his disability. Instead, the individual at Space Hunters stated "Eat shit" and hung up the telephone.

15. On or about February 24, 1999, Mr. Toto filed a claim with the United States Department of Housing and Urban Development ("HUD") alleging housing discrimination on the basis of physical disability.

16. On or about March 3, 1999, an investigator assigned by HUD to investigate Mr. Toto's allegations asked the Fair Housing Council to conduct a telephone test to determine how Space Hunters

treats individuals who are deaf. The Fair Housing Council is a non-profit fair housing corporation used by HUD to conduct tests in connection with HUD's enforcement of the Fair Housing Act.

17. On or about March 20, 1999, a tester for the Fair Housing Council placed a telephone call to Space Hunters through a relay service operator. The individual who answered the telephone at Space Hunters refused to deal with the tester through the relay service operator. Instead, the individual at Space Hunters stated only "Give me shit about Jesus Christ Almighty" and hung up the telephone.

18. On or about March 27, 1999, a second tester for the Fair Housing Council placed a telephone call to Space Hunters through a relay service operator. The individual who answered the telephone at Space Hunters again refused to deal with the tester through the relay service operator. Instead, the individual at Space Hunters stated only "Not interested, take a hike" and hung up the telephone.

19. On or about March 31, 1999, an investigator assigned by HUD to investigate Mr. Toto's allegations telephoned Space Hunters and asked to speak with the manager. When the HUD investigator informed the manager that she was investigating a complaint of discrimination against persons with disabilities, the Space Hunters manager became abrasive and loud, stating, among other things and in words or substance, that he was not required to deal with persons who are deaf. When the HUD investigator, who is African-American, informed the Space Hunters manager about the

substance of the complaint she was investigating, the Space Hunters manager stated, among other things, "Fuck you, nigger." Upon information and belief, the manager who made these statement to the HUD investigator was defendant McDermott.

20. On or about April 19, 1999, Mr. Toto filed a timely complaint against Space Hunters alleging housing discrimination on the basis of physical disability pursuant to Section 810(a) of the Fair Housing Act, 42 U.S.C. § 3610(a).

B. The Fair Housing Council's Complaint and Defendants' Discrimination on the Basis of Race or Color

21. The use of a racial epithet by the self-described manager of Space Hunters during the conversation with a HUD investigator prompted HUD to investigate whether Space Hunters also discriminates on the basis of race. On or about April 1, 1999, HUD requested that the Fair Housing Council conduct tests to determine whether Space Hunters engaged in race discrimination.

22. Beginning on or about April 2, 1999 and continuing through on or about April 17, 1999, the Fair Housing Council conducted tests to determine whether defendants treated black testers and white testers differently under similar circumstances. During the course of these tests, defendant McDermott repeatedly made racially derogatory remarks about African-Americans to white testers, treated black testers and white testers differently under similar circumstances, and did not provide the same range of services to the black testers as were provided to the white testers.

23. The first white tester reported that, during an

appointment with McDermott at Space Hunters on April 3, McDermott used the word "nigger" six or seven times. McDermott stated to the first white tester that he was the "Donald Trump" of people who usually come to Space Hunters, explaining that he "get[s] a lot of lowlife, scumbag niggers that come in." In addition, the first white tester observed McDermott treat an African-American couple, who were looking for a room for rent, in an abrupt and condescending manner. After that couple left the office, McDermott stated to the white tester: "Now there is a couple of dumb niggers." Furthermore, during that appointment the first white tester told McDermott that the tester was interested in renting a room in the Hunts Point section of the Bronx. McDermott stated to the first white tester that Hunts Point was not a good area and, in particular, was a high crime area.

24. When the second white tester arrived at the offices of Space Hunters on April 3 and expressed an interest in the Bronx, McDermott made reference to the first white tester as "another pale white guy" who had inquired about "of all places Hunts Point." McDermott also told the second white tester that he was not supposed to say anything about these areas but that Hunts Point was "a little questionable." In addition, McDermott stated to the second white tester that the "northern Bronx was okay." McDermott also told the second white tester that his office was open until 6:00 p.m.

25. The second white tester spoke to McDermott again on or about April 9, 1999, and requested an appointment with McDermott

for the following day. McDermott responded that he would not be in the office that day, and offered instead to provide information about available rooms to the second white tester over the telephone. When the second white tester responded that he was pressed for time, McDermott gave the white tester an alternate telephone number to call about available rooms.

26. A black tester also visited Space Hunters on April 3, 1999, and expressed an interest in rooms available for rent in the Bronx. When the black tester offered to pay the fee by credit card or check, McDermott insisted upon payment in cash, and stated to the black tester that he was one of the "lucky ones" who had a credit card or checking account. Although McDermott had told the second white tester that the office was open until 6:00 p.m., McDermott told the black tester at approximately 4:45 p.m. that he was leaving the office for the day and that it would take too long for the black tester to obtain cash from an automated teller machine. Instead, McDermott asked the black tester if he could come back on another day.

27. On April 17, 1999, a second black tester visited Space Hunters, paid the fee in cash, and expressed an interest in rooms available for rent in the Bronx. McDermott did not offer any advice to the second black tester about any neighborhoods within the Bronx, and did not encourage the second black tester to consider the northern Bronx. When the second black tester told McDermott that he was pressed for time, McDermott told the second black tester to call the "ad line" another day. McDermott did not

offer the second black tester the same alternate telephone number that he had offered to the second white tester.

28. On or about May 4 1999, the Fair Housing Council filed a timely complaint against Space Hunters and McDermott alleging housing discrimination on the basis of race or color pursuant to Section 810(a) of the Act, 42 U.S.C. § 3610(a).

PROCEDURAL BACKGROUND

29. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted and completed investigations of the complaints filed by Mr. Toto and the Fair Housing Council. HUD attempted conciliation with respect to these complaints, but conciliation efforts were not successful. Accordingly, HUD prepared final investigative reports for each of the complaints. Based upon information gathered in the investigations, and acting pursuant to 42 U.S.C. § 3610(g)(1), the Secretary determined that reasonable cause exists to believe that discriminatory housing practices had occurred with respect to each of the two complaints.

30. On or about January 14, 2000, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging defendants with engaging in discriminatory housing practices in violation of the Fair Housing Act. With respect to the complaint filed by Mr. Toto, the Secretary charged defendants with engaging in discriminatory housing practices in violation of sections 804, 805, and 806 of the Act, 42 U.S.C. §§ 3604, 3605, 3606. With respect to the complaint filed by the Fair Housing

Council, the Secretary charged defendants with engaging in discriminatory housing practices in violation of section 804 of the Act.

31. Defendants responded to the charges in writing by letters from McDermott dated April 22, April 26, and May 11, 1999. In his April 22 and 26 letters, McDermott responded to Mr. Toto's complaint. In the April 22 letter, McDermott referred to Mr. Toto as a "liar," a "malicious prevaricator (perjurer)," and a "clown." At the same time, McDermott admitted that he "hang[s] up on relay operators immediately" and contended that a "response such as 'Eat shit' would have been appropriate under circumstances where the operator continued to call after being informed that we do not entertain relay operator calls." McDermott claimed that Space Hunters does not engage in conversations with relay operators because such calls are "time consuming and we simply have better things to do with our time." McDermott also contended that the rooms in which he deals are exempt from the Fair Housing Act and that Space Hunters is therefore "free to reject any customer for any reason." In his April 26 letter, which also responded to Mr. Toto's complaint, McDermott stated that it was the "policy" of Space Hunters not to accept relay operator calls, and that the Fair Housing Act did not require Space Hunters "to lift a finger" with respect to Mr. Toto.

32. By letter to HUD dated May 11, 1999, McDermott responded to the complaint filed by the Fair Housing Council, denying the allegations. At the same time, however, McDermott

stated that "calling someone a nigger over the telephone in and of itself" would not violate the Fair Housing Act and that, "[i]f it was the intention of Space Hunters to deprive the public of housing because they are a so-called nigger, we may as well cancel all of our advertising immediately."

33. On or about February 7, 2000, defendants elected to have the charges resolved in a federal civil action pursuant to section 812(a) of the Act, 42 U.S.C. § 3612(a).

34. Pursuant to section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o), the Secretary has authorized the Attorney General to commence a civil action on behalf of Mr. Toto and the Fair Housing Council.

FIRST CLAIM FOR RELIEF

**On behalf of Keith Toto
For Violations of 42 U.S.C. § 3604(f)(1)(A)**

35. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 34 of this Complaint as if fully set forth in this paragraph.

36. Defendants violated section 804(f)(1)(A) of the Fair Housing Act, 42 U.S.C. § 3604(f)(1)(A), by discriminating against Mr. Toto in the rental of a dwelling, or otherwise making unavailable or denying him a dwelling, because of a handicap.

37. Mr. Toto is an aggrieved person, as that term is defined in section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of the conduct of the defendants.

38. The discriminatory actions of defendants were

intentional, wilful, and taken in disregard of the rights of Mr. Toto.

SECOND CLAIM FOR RELIEF

**On behalf of Keith Toto
For Violations of 42 U.S.C. § 3604(f)(3)(B)**

39. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 34 of this Complaint as if fully set forth in this paragraph.

40. Defendants violated section 804(f)(3)(B) of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B), by refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations were necessary to afford Mr. Toto an equal opportunity to use and enjoy a dwelling.

41. Mr. Toto is an aggrieved person, as that term is defined in section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of the conduct of the defendants.

42. The discriminatory actions of defendants were intentional, wilful, and taken in disregard of the rights of Mr. Toto.

THIRD CLAIM FOR RELIEF

**On Behalf of Keith Toto
For Violations of 42 U.S.C. § 3604(c)**

43. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 34 of this Complaint as if fully set forth in this paragraph.

44. Defendants violated section 804(c) of the Fair

Housing Act, 42 U.S.C. § 3604(c), by making statements to Mr. Toto with respect to a dwelling that indicated a preference, limitation, or discrimination based on a handicap, or an intention to make such a preference, limitation, or discrimination.

45. Mr. Toto is an aggrieved person, as that term is defined in section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of the conduct of the defendants.

46. The discriminatory actions of defendants were intentional, wilful, and taken in disregard of the rights of Mr. Toto.

FOURTH CLAIM FOR RELIEF

On Behalf of Keith Toto **For Violations of 42 U.S.C. § 3606**

47. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 34 of this Complaint as if fully set forth in this paragraph.

48. Defendants violated section 806 of the Fair Housing Act, 42 U.S.C. § 3606, by denying Mr. Toto access to a service relating to the business of renting dwellings, or otherwise discriminating against Mr. Toto in the terms and conditions of such access, because of a handicap.

49. Mr. Toto is an aggrieved person, as that term is defined in section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of the conduct of the defendants.

50. The discriminatory actions of defendants were

intentional, wilful, and taken in disregard of the rights of Mr. Toto.

FIFTH CLAIM FOR RELIEF

**On Behalf of the Fair Housing Council
For Violations of 42 U.S.C. § 3604(a)**

51. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 34 of this Complaint as if fully set forth in this paragraph.

52. Defendants violated section 804(a) of the Fair Housing Act, 42 U.S.C. § 3604(a), by making unavailable or denying a dwelling to Fair Housing Council testers because of race or color.

53. The Fair Housing Council is an aggrieved person, as that term is defined in section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of the conduct of the defendants.

54. The discriminatory actions of defendants were intentional, wilful, and taken in disregard of the rights of the Fair Housing Council.

SIXTH CLAIM FOR RELIEF

**On Behalf of the Fair Housing Council
For Violations of 42 U.S.C. § 3604(b)**

55. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 34 of this Complaint as if fully set forth in this paragraph.

56. Defendants violated section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b), by discriminating against Fair

Housing Council testers in the rental of a dwelling, or in the provision of services in connection with the rental of a dwelling, because of race or color.

57. The Fair Housing Council is an aggrieved person, as that term is defined in section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of the conduct of the defendants.

58. The discriminatory actions of defendants were intentional, wilful, and taken in disregard of the rights of the Fair Housing Council.

SEVENTH CLAIM FOR RELIEF

On Behalf of the Fair Housing Council For Violations of 42 U.S.C. 3604(c)

59. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 34 of this Complaint as if fully set forth in this paragraph.

60. Defendants violated section 804(c) of the Fair Housing Act, 42 U.S.C. 3604(c), by making statements to Fair Housing Council testers with respect to the rental of a dwelling that indicated a preference, limitation, or discrimination based on race or color, or an intention to make such a preference, limitation, or discrimination.

61. The Fair Housing Council is an aggrieved person, as that term is defined in section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), and has suffered damages as a result of the conduct of the defendants.

62. The discriminatory actions of defendants were

intentional, wilful, and taken in disregard of the rights of the Fair Housing Council.

RELIEF REQUESTED

WHEREFORE, Plaintiff United States of America requests that the Court enter judgment:

A. Declaring that the discriminatory housing practices of the defendants as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq.;

B. Enjoining the defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of race, color, religion, sex, handicap, familial status, or national origin against any person in any aspect of the rental or sale of a dwelling. More specifically, plaintiff requests that the Court enjoin the defendants from refusing to accept telephone calls from relay service operators; from making statements with respect to the rental of dwellings that indicate a preference, limitation, or discrimination based on race, color, or handicap, or an intention to make such a preference, limitation, or discrimination; and from refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with a handicap equal opportunity to use and enjoy dwellings.

C. Awarding such damages as will compensate Mr. Toto fully for the damages caused by the defendants' discriminatory conduct; pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. §

3613(c);

D. Awarding such damages as will compensate the Fair Housing Council fully for the damages caused by the defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. § 3613(c);

E. Awarding punitive damages to Mr. Toto pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. § 3613(c);

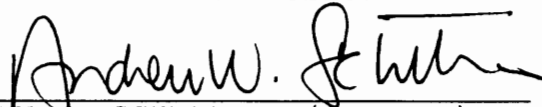
F. Awarding punitive damages to the Fair Housing Council pursuant to 42 U.S.C. § 3612(o)(3) and 42 U.S.C. § 3613(c);
and

G. Granting such further relief as this Court may deem just.

Dated: New York, New York
March 8, 2000

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Southern District of New York
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